

# Order

Entered: May 17, 2002

Michigan Supreme Court  
Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

1999-20

Amendment of Rules 7.204,  
7.212, 7.213, 7.215, and 7.302  
of the Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 7.204, 7.212, 7.213, 7.215, and 7.302 of the Michigan Court Rules are adopted, to be effective September 1, 2002.

[The present language is amended as indicated below.]

Rule 7.204 Filing Appeal of Right; Appearance

(A) - (C) [Unchanged.]

(D) Form of Claim of Appeal.

(1) - (2) [Unchanged.]

(3) If the case involves

(a) a contest as to the custody of a minor child, or

(b) a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid,

that fact must be stated in capital letters on the claim of appeal. In an appeal specified in subrule (D)(3)(b), the Court of Appeals shall give expedited consideration to the appeal, and, if the state or an officer or agency

of the state is not a party to the appeal, the Court of Appeals shall send copies of the claim of appeal and the judgment or order appealed from to the Attorney General.

(E) - (H) [Unchanged.]

Rule 7.212        Briefs

(A) - (B) [Unchanged.]

(C) Appellant's Brief; Contents.    The appellant's brief must contain, in the following order:

- (1) A title page, stating the full title of the case and in capital letters or boldface type "ORAL ARGUMENT REQUESTED" or "ORAL ARGUMENT NOT REQUESTED". If the appeal involves a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid, the title page must include the following in capital letters or boldface type:

**"THE APPEAL INVOLVES A RULING THAT A  
PROVISION OF THE CONSTITUTION, A STATUTE,  
RULE OR REGULATION, OR OTHER STATE  
GOVERNMENTAL ACTION IS INVALID";**

(2) - (9) [Unchanged.]

(D) - (I) [Unchanged.]

Rule 7.213        Calendar Cases

(A) - (B) [Unchanged.]

(C) Priority on Calendar.    The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:

- (1) interlocutory criminal appeals;
- (2) child custody cases, ~~cases that the court orders expedited, and;~~
- (3) interlocutory appeals from the grant of a preliminary injunction;
- (4) appeals of decisions holding that a provision of the Michigan Constitution, a Michigan statute, a rule or

regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid; and

(5) cases that the court orders expedited.

(D) - (E) [Unchanged.]

Rule 7.215 Opinions, Orders, Judgments and Final Process from Court of Appeals

(A) [Unchanged.]

(B) Standards for Publication. A court opinion must be published if it:

(1) - (5) [Unchanged.]

(6) criticizes existing law; ~~or~~

(7) creates or resolves an apparent conflict of authority, whether or not the earlier opinion was reported; or

(8) decides an appeal from a lower court order ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid.

(C) - (I) [Unchanged.]

Rule 7.302 Application for Leave to Appeal

(A) [Unchanged.]

(B) Grounds. The application must show that

(1) - (3) [Unchanged.]

(4) in an appeal before decision by the Court of Appeals,

(a) delay in final adjudication is likely to cause substantial harm, or

(b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan

Administrative Code, or any other action of the legislative or executive branch of state government is invalid;

(5) - (6) [Unchanged.]

(C) - (G) [Unchanged.]

Cavanagh, J., (*dissenting*). I dissent from the adoption of these amendments as I do not see the existence of the problem these amendments purport to address.

Kelly, J., joins in the statement of Cavanagh, J.

Staff Comment: The May 17, 2002, amendments of MCR 7.204, 7.212, 7.213, 7.215, and 7.302, which are effective September 1, 2002, relate to appeals in which a Michigan constitutional provision, statute, regulation, or other governmental action has been held to be invalid.

The amendment of MCR 7.204(D)(3) requires that the claim of appeal identify cases involving such a ruling, and directs the Court of Appeals to give expedited treatment to such appeals and to send copies of the claim of appeal and the order appealed from to the Attorney General if the state is not a party.

The amendment of MCR 7.212(C)(1) requires identification of such cases on the title page of the brief on appeal.

Language is added to MCR 7.213(C) directing that such cases be given precedence in placement on the Court of Appeals session calendar. The subrule as amended includes language previously added by an amendment dated March 12, 2002, also to be effective September 1, 2002, regarding orders granting preliminary injunctions.

New MCR 7.215(B)(8) would add decisions in such cases to the list of those in which the Court of Appeals is required to publish its decisions.

MCL 7.302(B)(4) is amended to add as a ground for an application for leave to appeal to the Supreme Court before decision by the Court of Appeals that the appeal is from an order holding that such a provision or action is invalid.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.